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In the Supreme Court of the United States

OCTOBER TERM, 1976

77-82

CHARLOTTE CICHANSKI,

Petitioner,

VS.

HONEYWELL, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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To the Honorable Warren E. Burger, Chief Justice of the Supreme Court of the United States and the Associate Justices of the Supreme Court of the United States

This is a petition by Charlotte Cichanski for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above case.

OPINIONS BELOW

1. The opinion of the District Court is unreported. A copy thereof is attached hereto as Appendix B (App. 2).

2. The opinion of the Court of Appeals is unreported. A copy thereof is attached hereto as Appendix C (App. 8).

JURISDICTION

The date of the judgment sought to be reviewed and the time of its entry is, December 6, 1976 as shown by Appendix C (App. 8).

A timely motion for Rehearing was filed and an order denying a rehearing was entered on February 15, 1977 as shown by Appendix D (App. 15).

A timely Application for Extension of Time Within Which to File Petition for Certiorari was filed, and was granted on May 5, 1977, allowing until July 15, 1977 to file this Petition as shown by Appendix E (App. 16).

Jurisdiction of this cause is conferred on the Supreme Court by 28 U.S.C. §1254.

QUESTIONS PRESENTED

1. Are the standards for the disposition of private, non-class actions challenging employment discrimination prohibited by Title VII of the Civil Rights Act of 1964, as amended, as articulated by the Supreme Court in *McDonnell Douglas* v. *Green*, 411 U.S. 792 (1973) mandatory on the Circuit Courts of Appeals?

2. Are private non-class actions brought pursuant to Title VII of the Civil Rights Act of 1964, as amended, challenging employment discrimination based on sex governed by the same standards of disposition as comparable actions challenging employment discrimination based on race?

STATUTES INVOLVED

Title VII of the Civil Rights Act of 1964, as amended, 78 Stat. 253, 42 U.S.C. §2000e *et seq.*, provides in §703:

> (a) It shall be an unlawful employment practice for an employer—
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.
>
> 42 U.S.C. §2000e-2(a)

STATEMENT OF THE CASE

Petitioner, Charlotte Cichanski, is a 55 year old woman who was first employed by the Respondent, Honeywell, Inc. (Honeywell), on October 16, 1950 and was terminated by Honeywell on February 10, 1972. During her employment with Honeywell, Ms. Cichanski worked in various capacities in the Production Planning, Stationery, Accounting, Methods, Applications, Steno Pool, and Quality Departments. For the last ten years of her employment with Honeywell, Ms. Cichanski worked in the Quality Department and the final three of those years were spent under the supervision of Mr. Sanford Egesdal. In the six to eight months immediately preceding her termination, Ms. Cichanski made repeated requests for a transfer or

promotion which would have taken her away from Mr. Egesdal's supervision.

Ms. Cichanski filed her verified charge of sex discrimination against Honeywell with the EEOC on June 10, 1972, in the form of case file number TCH 2-2248. The charge was processed in accordance with the mandate of Title VII, and a copy of the charge was served on Honeywell. Ms. Cichanski requested and was mailed her right to sue letter on February 8, 1974. Ms. Cichanski then filed the instant action on March 20, 1974, in the United States District Court for the Northern District of Illinois.

At the trial of this matter, Honeywell stipulated that its non-factory force of supervisors at the Morton Grove and Arlington Heights facilities at which Plaintiff was employed was as follows:

1969—33 males and 1 female;
1970—55 males and 4 females;
1971—56 males and 4 females;
1972—54 males and 3 females.

Honeywell further stipulated that all ten of Ms. Cichanski's supervisors during her 21 years, 4 months employment with Honeywell were male.

Of all persons employed in the Quality Department from December 1969 through December 1974, 100% of those employed as supervisors were male, 100% of those employed as engineers and technicians were male and 100% of those employed as clericals were female. Of the persons supervised by Mr. Egesdal, all of the engineers and technicians were male and the only clerk-typists, Ms. Cichanski and the woman who replaced her, were female.

Ms. Cichanski also repeatedly sought to introduce evidence of company wide sexual stratification. This rejected evidence showed men overwhelmingly predominant in

technical, administrative, and supervisory positions, and women in a similar predominance in clerical positions. It also showed a very significant sexual disparity in salary grade within these categories. All of this evidence was excluded as lacking relevancy.

The only supervisors to make periodic formal written evaluations of Ms. Cichanski's job performance during her 21 years of employment at Honeywell were Mr. Baron (8/10/64); Mr. Beck (5/11/66); Mr. Mikol (7/5/67 and 8/7/68); and Mr. Egesdal (9/12/69 and 12/7/70). On each of these written evaluations Ms. Cichanski's work performance at Honeywell was rated as "outstanding" according to the Honeywell compensation manual. The Honeywell compensation manual defines "outstanding performance" as follows:

> An employee in this level should have mastered every element of the assigned job and should be performing at a level well beyond that normally expected. Such an employee will add elements of performance which are clearly the result of the employee's own personal imagination or initiative. This level of performance approaches the *best* that might possibly be expected of any employee on a given job.

On February 7, 1972, on the very day he decided to procure Ms. Cichanski's termination, Mr. Sanford Egesdal prepared another type of employee evaluation of petitioner, which was known as a Quarterly Manpower Management Review, in which he rated her "overall performance of objectives" as "average," and at trial he testified that that rating related to a combination of both the work product and work conduct of Ms. Cichanski.

Honeywell's "Personnel Policies and Procedures" specified that the environment of an apparently "failing" em-

ployee should be carefully examined to determine if such external factors as "poor supervisory-subordinate relationships, organization confusion, inequitable treatment and the like" are causing an employee's failure. If so, the corrective action mandated is to remove those negative factors rather than the employee. Reassignment of the employee is to be used where possible as an alternative to termination, and a thorough review of the entire situation should be made, particularly where a long term employee is involved.

Honeywell's policies specify the grounds for discharge of an employee as:

a. Inability to perform assigned duties because of lack of necessary experience, education, mental ability or health.

b. Willful misconduct or infractions of established Company rules.

c. Insubordination or refusal to follow directions of supervisor.

d. Excessive absenteeism.

When contemplating the termination of an employee 40 years of age or over *and* with 15 or more years of Honeywell service, the facts of the case are to be reported through the normal line organization to G. E. Morse, Corporate Vice President, Employee Relations, at least one month in advance of notice of termination. The petitioner was terminated without compliance with this procedure.

REASONS FOR GRANTING THE WRIT

1. THIS COURT SHOULD GRANT THE INSTANT PETITION BECAUSE THE SEVENTH CIRCUIT COURT OF APPEALS HAS REFUSED TO APPLY THE SUPREME COURT'S STANDARDS FOR THE DISPOSITION OF PRIVATE, NON-CLASS ACTIONS CHALLENGING EMPLOYMENT DISCRIMINATION PROHIBITED BY TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 AS AMENDED, AND HAS SANCTIONED THE DISTRICT COURT'S REFUSAL TO FOLLOW THESE SAME STANDARDS.

In *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973) this Court established a three step rule to govern the allocation of the burden and order of proof in actions under Title VII of the Civil Rights Act of 1964, 78 Stat. 253, 42 U.S.C. §2000e *et seq.*:

> The complainant in a Title VII trial must carry the initial burden under the statute of establishing a prima facie case of . . . discrimination.
>
> • • •
>
> The burden[1] then must shift to the employer to

[1] Subsequent decisions of this Court and of the Courts of Appeals have clarified that the employer bears not simply a burden of going forward with evidence at the second stage but a burden of proof that the complained of personnel decision was taken for a legitimate, non-discriminatory reason. See *Franks* v. *Bowman Transportation Co., Inc.*, 424 U.S. 747, 96 S.Ct. 1251, 47 L.Ed.2d 444 (1976). See also *Johnson Bronze Co.* v. *Ostapowicz*, 541 F.2d 394 (3rd Cir. 1976), cert. denied ..... U.S. ....., 45 U.S.L.W. 3463 (1977).

> articulate some legitimate, nondiscriminatory reason for the [personnel action or practice complained against].
>
> • • •
>
> [If the employer meets its burden at the second stage, the complainant must] be afforded a fair opportunity to show that [the employer's] stated reason for [the complained of action or practice] was in fact pretext.

411 U.S. at 802-04.

This Court outlined the factual showing which would be sufficient to establish a *prima facie* case of proscribed discrimination in the context of a refusal to hire a minority applicant and recognized that the *prima facie* proof would vary in differing Title VII factual situations. 411 U.S. at 802, n.13.

This Court also discussed at length the nature of evidence which would be especially relevant toward showing that a purported reason was in fact a pretext or coverup for a discriminatory action. Such proofs included: (1) evidence of the employer's treatment of the employee during the term of his employment, (2) evidence that employees who were not members of the complainant's class committed acts of comparable seriousness to that charged against the complainant but were nevertheless retained, or (3) evidence of the employer's general policy and practice with respect to employees in the complainant's class and, in particular, statistics tending to show a general pattern of discrimination by the employer against members of the complainant's class. 411 U.S. at 804-05.

Following a trial on the merits before a District Judge sitting with an advisory jury, the District Court below, disregarding the advisory jury's verdict, entered judgment for the respondent on all of petitioner's claims and rendered a decision which wholly ignored the method of

analysis and the standards mandated by this Court's rule in *McDonnell Douglas.* On appeal the Court of Appeals for the Seventh Circuit approved the District Court's refusal to follow the *McDonnell Douglas* rule. A recounting of the nature and substance of the proofs offered by the parties at trial compels this Court to grant the instant Petition for Certiorari in order to prevent the Seventh Circuit Court of Appeals from doing violence to the congressionally mandated purposes of Title VII as protected by this Court's decision in *McDonnell Douglas Corp.* v. *Green,* supra.

At the close of Ms. Cichanski's case in chief[2] the District Court denied Honeywell's motion for a directed verdict and found that she had established a "rather questionable *prima facie* case." In its decision the District Court found that "[t]he facts are that substantially more men are employed in certain positions of the defendant's plant than are women and at generally higher salaries, that men are given greater privileges with respect to lunch, coffee breaks and late arrival than women, and that defendant discharged the plaintiff without following its usual written policy procedures." (App. 3). The District Court also noted in its decision that "[d]efendant concedes that it made a 'subjective evaluation' . . . ." (App. 5)

That the District Court refused to make the intensive scrutiny of Honeywell's stated reasons for its treatment of Ms. Cichanski as is mandated by this Court's opinion

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[2] As this Court recognized in *McDonnell Douglas Corp.* v. *Green,* supra, the tripartite ebb and flow of proofs in Title VII actions would vary with each case. In the instant matter petitioner presented in her case in chief both her *prima facie* case and evidence to show Honeywell's interposed defense to be pretextual.

in *McDonnell Douglas* is made manifest by its repeated assertions that there is *no evidence* that petitioner was discharged because of her sex. The District Court asserted in its opinion that "we find *no reason* to question the good faith of the defendant or the supervisor." (App. 5) (emphasis added). But just such a questioning is absolutely required if Ms. Cichanski is to have her "full and fair opportunity to demonstrate by competent evidence that the presumptively valid reasons for [her discharge] were in fact a coverup for a [sexually] discriminatory decision." *McDonnell Douglas Corp.* v. *Green,* id, at 805.

The evidence revealed that Ms. Cichanski worked in an immediate environment in which females were totally and exclusively segregated into the lowest positions, and further statistical data was offered to show Honeywell's highly stratified pay and job structure among all non-production employees in the facility in which Ms. Cichanski was employed. Such evidence was explicitly recognized by this Court in *McDonnell Douglas* as being "helpful to a determination of whether [an employer's actions with respect to an individual] conformed to a general pattern of discrimination . . . ." 411 U.S. at 805.

Many courts have recognized that proof of even overt discrimination is seldom direct. See e.g., *United States* v. *Jacksonville Terminal Co.,* 451 F.2d 418 (5th Cir. 1971); *Marquez* v. *Omaha District Sales Office, Ford Div.,* 440 F.2d 1157 (8th Cir. 1971). Where discriminatory actions and practices are subtle and elusive, statistical data become even more important for placing employment practices in their proper perspective. Although Honeywell offered no explanation for the total sexual stratification of employees in its Quality Department, the District Court declared that "there is no objective evidence that the defendant discriminated generally against women . . . with respect to job classifications." (App. 6)

The evidence showed, and the District Court found, "that men are generally given greater privileges with respect to lunch, coffee breaks and late arrival than women. . . ." (App. 3) The District Court also found that women "were not treated entirely the same as men, because the job content and their duties differed," (App. 6) but Honeywell offered no such justification for this disparate treatment and Mr. Egesdal insisted that the starting and quitting times and break times were the same for all employees in the Quality Department.

The incidents which precipitated Mr. Egesdal's decision to procure the discharge of Ms. Cichanski confirm the sexually discriminatory nature of that decision. Ms. Cichanski's unrebutted testimony shows that on February 6, 1972, Mr. Egesdal severely reprimanded and threatened to physically assault her for allegedly attempting to leave work earlier than the official quitting time of 4:15 P.M. when one clock in the office showed the time as 4:15 P.M. and the other clock showed 4:14 P.M. On the following day, Mr. Egesdal called petitioner into his office to conduct what he claimed was a routine "Quarterly Manpower Management Review" during which he rated petitioner's overall performance as average. When Ms. Cichanski refused to close the door to his office for fear that he would assault her, Mr. Egesdal terminated the session and proceeded to obtain expedited approval for her discharge. On February 10, 1972 Ms. Cichanski was informed by Mr. Egesdal and Mr. Murphy, the manager of the Quality Department, that she was being terminated effective immediately.

In sharp contrast to the consequences suffered by Ms. Cichanski, Mr. Egesdal testified that he had not discharged a male subordinate, who was an alcoholic and was habitually late in arriving at work and would disappear during

the work day. Mr. Egesdal also reaffirmed his prior testimony that "some guys were early birds and left exactly on time. Other guys would not come in on time and didn't like the fact that I reminded them of it."

The importance of such evidence of disparate consequences flowing from acts of comparable seriousness was emphasized by this Court in *McDonnell Douglas* as being competent and highly relevant proof that the stated reasons for a personnel action are in fact a pretext. Clearly a male "early bird" under Mr. Egesdal's supervision would not even be reminded of the company's hours if he occasionally or habitually left work a minute too soon. But Ms. Cichanski was loudly reprimanded, threatened with physical abuse, called into her supervisor's office for obviously punitive reasons and ultimately discharged from the job she had held for 21 years on a moment's notice.

The connection between the disparate enforcement of uniform company hours and Ms. Cichanski's discharge is so direct and immediate that it is more than mere circumstantial evidence from which an inference might be drawn that the "bad attitude" credited for her firing is "in fact a coverup for a [sexually] discriminatory decision." It is the very substance of discrimination.

The District Court observed that Honeywell made a subjective evaluation of Ms. Cichanski (although it obviously misunderstood the import of that term), and it found that Honeywell failed to follow its own policy procedures in effecting her discharge. Nevertheless, the District Court found "no reason to question the good faith of the defendant or the supervisor." (App. 5)

There can be no question but that Mr. Egesdal disliked Ms. Cichanski. The uncontradicted testimony by Ms. Cichanski and Nancy Norris, a co-worker, was that he

treated Ms. Cichanski in a "demanding, abrupt, harsh and unreasonable" manner. And it was Mr. Egesdal who procured the firing of Ms. Cichanski on the basis of his evaluation that she was the cause of the so-called "personality conflict" between them.

Mr. Bartolini, a former personnel manager for Honeywell, testified that in 1969 he had initiated a program of written work objectives which was implemented by each managerial employee negotiating the objectives with his next immediate subordinates who would in turn do the same with their subordinates until the system had been fully implemented. Mr. Egesdal testified that he had, by 1972, implemented this objective evaluation system with respect to the engineers and technicians under his supervision and believed that some secretaries had been included, but he had not negotiated work objectives with Ms. Cichanski. He further testified that the evaluation of secretaries was much more subjective than that for any other labor grade and that he would choose two to seven criteria from a master list which, with respect to attitude, required that secretaries (i.e. females) act "graciously" and "courteously" toward technicians, engineers and supervisors (i.e. males).

Honeywell responded to Ms. Cichanski's claim that she had been discharged as a result of sex discrimination by asserting that she was discharged because of her "bad attitude," manifested by an inability to get along with her supervisor, Mr. Egesdal, and an inability to get along with her co-workers. However, Mr. Bartolini admitted that he had told petitioner that her discharge was because of her "bad attitude toward her supervisor." Mr. Egesdal admitted that his evaluation of her overall performance on the very day he decided to procure her discharge was that she was an average employee with respect to both

her work performance and her conduct, and his testimony was confirmed by a form he had completed on that day. In light of this testimony, the District Court's findings that Ms. Cichanski did not get along well with certain co-workers (which was supported, at best, by two minor incidents, one of which occurred more than two years before her discharge), did not perform her work load as well as her co-workers, and resisted taking on work from other secretaries are clearly unwarranted, and such "reasons" formed no part of the basis of her discharge.

Honeywell's "Personnel Policies and Procedures" specify that the environment of an apparently "failing" employee should be carefully examined to determine if such external factors as "poor supervisory-subordinate relationships, organization confusion, inequitable treatment and the like" are causing an employee's failure. Those policies direct that the corrective action should be to remove such factors, rather than the employee. They further specify that reassignment is to be used where possible as an alternative to termination, and that a thorough review of the entire situation should be made, particularly where a long-term employee is involved. Honeywell's policies also require that "[f]or employees 40 years of age or over *and* with 15 or more years of Honeywell service, the facts of the case are to be reported to . ... [the] corporate Vice President, Employee Relations, at least one month in advance of notice of termination."

That a poor supervisory-subordinate relationship existed is beyond question, and there was ample evidence of Mr. Egesdal's inequitable, if not illegal, treatment of Ms. Cichanski. The only periodic evaluation of Mr. Egesdal prepared by his superiors during his tenure in the Quality Department criticized him for being partly responsible for the "lack of work organization" in his department and as needing "considerable improvement in basic supervisory techniques." Mr. Bartolini obtained approval of Ms. Cichanski's discharge within three days, via telephone, and she was notified of her termination effective immediately without notice, on February 10, 1972. By April 1, 1972, Mr. Egesdal had been transferred out of the Quality Department and has never since been given direct supervisory control over any woman.

While petitioner does not argue that Honeywell was legally bound to follow its own personnel policies, it is legally bound to apply them alike to both sexes. Mr. Egesdal testified that the only two men he had terminated while in the Quality Department were fired for failure to meet their agreed upon performance objectives. His only female employee, Ms. Cichanski, was not evaluated by those same standards and was terminated for an alleged bad attitude toward her supervisor even though he considered her an average employee. The gist of a Title VII violation is unequal treatment, and Honeywell utterly failed to show that a long term male employee, deemed no worse than average with respect to performance and conduct, would have been evaluated on the basis of his "graciousness" or other subjective criteria and terminated because of an alleged bad attitude, in total disregard of the procedures provided for review. Since Honeywell has wholly failed to make such a showing, the District Court's inability to find evidence of sex discrimination is inexplicable and its assigned reasons for Ms. Cichanski's discharge cannot be considered legitimate or non-discriminatory under the *McDonnell Douglas* rule.

Clearly the District Court not only refused to follow the method of analysis and observe the allocation of burdens mandated by *McDonnell Douglas,* but also refused

to accord any weight whatsoever to the very kinds of evidence that this Court foresaw would be the normal means of proving what is often subtle and elusive, but no less pernicious, discrimination.

Rather than to discipline the trial court, the Court of Appeals approved its decision, and has itself refused to apply either the rules for the allocation of the burdens and order of proofs or the teachings regarding the appropriate nature of proofs established by this Court in *McDonnell Douglas*. Although the Court of Appeals noted that the District Court had denied the respondent's motion at the close of petitioner's case-in-chief and had found a *prima facie* case of sex discrimination on each of her claims, the Appeals Court failed to consider whether respondent had established legitimate, non-discriminatory reasons for refusing to promote or transfer, and for discharging, petitioner or whether the evidence disclosed that respondent's claimed reasons were in fact used to cover up discriminatory personnel decisions.

Instead, the Court of Appeals engaged in a piecemeal consideration of parts of petitioner's evidence and noted repeatedly that certain items of evidence could give rise to a permissible inference of sex discrimination had the trial judge been inclined to draw the inference. Such a characterization of the District Court's decision ignores the plain fact that the trial judge refused to accord any weight whatsoever to the very kinds of evidence that this Court has recognized not only as competent proofs but also as the normal and usual kinds of proofs of class-based discrimination in a private, non-class action under Title VII.

By evading the mandated process of analysis, both the District Court and the Court of Appeals have avoided having to clearly articulate reasons for the anomalous

result in this case. It is absurd to suppose that Honeywell could have shown, much less did show, that a male employee, with 21 years of experience and six consecutive formal evaluations as an outstanding employee, would have been locked into the modest position of a grade three clerk-typist and then discharged because of a bad attitude toward, or a personality conflict with, a hostile supervisor, himself deemed to be lacking in basic supervisory techniques, on the basis of a wholly subjective evaluation made upon amorphous standards, and in gross violation of company policies intended to assure him of fair treatment.

The District Court stated in its opinion that Ms. Cichanski's attitude had deteriorated in part because of an alleged transportation problem and a desire to be transferred to the Arlington Heights plant, even though she denied having any transportation problems and Mr. Bartolini admitted that she had requested a transfer to any position in the company no matter where it was located, which would remove her from Mr. Egesdal's supervision. In any event, Ms. Cichanski was relocated along with everyone else in her department to the Arlington Heights plant more than two months before her discharge and persisted in seeking a transfer away from Mr. Egesdal.

Respondent's asserted policy against granting any transfers during its relocation of facilities, which occurred during 1970 and 1971, because of the purported difficulty of hiring replacements, was contradicted by records of personnel actions taken in the Quality Department during that period, which had been submitted into evidence. These records show that seven persons had been reassigned by transfer or promotion out of that department alone. Moreover the legitimacy of this asserted policy on its face is

highly questionable since it is common knowledge that many persons in the northern Chicago metropolitan area commute much greater distances to work and there was no indication that any substantial number of Honeywell employees resigned rather than arrange for transportation to its new facilities. In any event, positions for which Ms. Cichanski applied were open at both facilities.

The District Court failed to assess the legitimacy of the alleged company policies precluding a transfer in light of the conflicting documentary evidence produced by Honeywell and stated that even if the denial of a transfer was discriminatory her discharge rendered her claim of discrimination moot. But obviously if Ms. Cichanski had been granted a reassignment, the so-called "personality conflict" credited by the District Court as necessitating her discharge would no longer have existed.

Since Ms. Cichanski was erroneously precluded from presenting evidence of her qualifications for positions higher than the one she held at the time she was terminated, it is not surprising that the advisory jury found in favor of respondent on the issue of the refusal of respondent to promote her, but it is disturbing that the District Court and Court of Appeals credited her purported lack of qualifications as a legitimate basis for that action.

Although this Court has repeatedly held that the good faith of an employer is not a defense to a claim of employment discrimination under Title VII, and that disparate effect and unequal treatment are the measures of proof in such cases, the Court of Appeals sanctioned the District Court's approval of a good faith defense in this case. The trial court specifically found that there was no reason to question the "good faith" of the company or its agent in this case in a context clearly linking the issue of good faith to the employer's articulated defense to Ms. Cichanski's charges of sex discrimination and to whether or not an intent to discriminate was present. Neither of these issues were properly before the trial court, and the finding of the trial court on this issue clearly prevented the petitioner from establishing respondent's defense as pretextual.

The Court of Appeals neatly sidestepped this question on appeal by stating that, "neither the 'wisdom' nor the 'good faith' of the company's actions was at issue in this Title VII case." (App. 10) That is a correct statement of the law; but it totally ignores the error of the District Court in making a finding that the company's good faith protected its articulated defense from attack by petitioner as being pretextual.

The Court of Appeals itself found after reviewing the trial court record that Ms. Cichanski had performed "admirably" (App. 9) and had a "sterling employment record" (App. 9) at Honeywell. It further found that she was "probably treated unfairly" (App. 10) by Honeywell with respect to the actions taken by the company against her. Yet despite all this, and in the face of all of the direct and circumstantial evidence of systemic sex discrimination in employment by Honeywell and unequal treatment of Ms. Cichanski as compared with her male coworkers, and despite the "arguably correct" decisons excluding highly relevant, but "cumulative" evidence of petitioner's qualifications and systemic sex discrimination by Honeywell, the Court of Appeals affirmed the District Court's decision.

This affirmance does violence to Title VII and this Court's frequent and consistent rulings championing victims of prohibited, class-based discrimination in employment. Ms. Cichanski stands in the place of thousands of

individual victims of unlawful employment discrimination who come to the federal courts of this nation alone, and unsupported by organizations or classes of similarly aggrieved individuals, seeking the fair administration of justice. This Court should grant the instant Petition not only because of the importance of the legal issues presented, but also because of the importance of making it possible for an aggrieved individual Title VII plaintiff to be given the opportunity to have the law of the land applied to her case. Though Ms. Cichanski stands alone before this Court, the consequence of granting her petition is to assure equal treatment in the federal courts for the thousands of other working class Americans who do not have rich and powerful political or legal champions in their long and silent battles for equal employment opportunities.

2. THIS COURT SHOULD GRANT THE INSTANT PETITION BECAUSE THE SEVENTH CIRCUIT COURT OF APPEALS HAS IMPOSED AND SANCTIONED THE DISTRICT COURT'S IMPOSITION OF A DIFFERENT AND HIGHER STANDARD OF PROOF ON AN INDIVIDUAL CLAIMING SEX DISCRIMINATION IN EMPLOYMENT AS PROHIBITED BY TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED, THAN ON A SIMILARLY SITUATED INDIVIDUAL CLAIMING RACE DISCRIMINATION.

In *McDonnell Douglas Corp.* v. *Green,* 411 U.S. 792 (1972) this Court answered crucial questions regarding the "proper order and nature of proof in actions under Title VII of the Civil Rights Act of 1964," 411 U.S. at 793-4 and, in particular, addressed issues pertaining to the "order and allocation of proof in a private, non-class action challenging employment discrimination." 411 U.S. at 800. Although Green's complaint alleged racial discrimination and much of this Court's opinion is therefore couched in the language of race, petitioner believes that this Court rendered a decision equally applicable to actions alleging discrimination on the basis of sex.

The steadfast refusal of the courts below to adhere to this Court's opinion in *McDonnell Douglas* can be understood only in terms of the imposition of a different and higher standard of proof for sex discrimination claims than for race discrimination claims.

This discrepancy becomes apparent in the grudging concession by the District Court that Ms. Cichanski had established a "rather questionable *prima facie* case" (App. 6) by showing the total absence of any female in any position above clerk-typist in her department, the differential granting of "privileges" on the basis of sex, and the

totally unexplained departure from procedures designed to safeguard the employee from unfair, arbitrary and unfounded personnel actions. A comparable showing in a race discrimination action accompanied by proof that the black person had ten years experience in the position and was rated no worse than an average employee at the very moment of his discharge, would certainly be more than a rather questionable *prima facie* case.

The higher standard becomes more obvious in the District Court's exclusion of statistical evidence of a highly stratified, plant wide job and pay structure. Such evidence has been deemed by many courts to be sufficient in itself to establish a *prima facie* case of racial bias and is almost universally accepted as highly relevant evidence in race discrimination cases.

It seems inconceivable that if a black employee were to demonstrate at trial what Ms. Cichanski did, that the District Court would find no evidence of racial discrimination in the same manner in which it found no evidence of sex discrimination in Ms. Cichanski's case.

Substituting race for sex in the instant case, we find a trial record demonstrating a black employee segregated with other blacks in a lowly position and treated differently than whites with respect to the terms and conditions of his employment. We find him to have been evaluated by a white supervisor using a much more highly subjective method upon more subjective criteria than that used for evaluating white employees. We find that despite this disparate treatment the black employee is found to be no worse than an average employee but is nevertheless discharged by his white supervisor on the basis of a "bad attitude" toward that supervisor. We find the discharge to have been accomplished in violation of established company policies. In such a context it is indeed shocking that a trial judge could avow his inability to find any evidence of racial discrimination directed toward that black employee and could find no reason to question the good faith of the employer or the supervisor. It is equally shocking that a Court of Appeals could affirm such a decision.

The Court of Appeals, in this case, after noting Ms. Cichanski's "sterling employment record," observed that:

> The evidence presented below, taken as a whole, points to the conclusion that the plaintiff was probably treated unfairly by the defendant. But Title VII does not proscribe employers from treating employees unfairly . . . (App. 10)

Then, citing Honeywell's "purported" reasons for discharging Ms. Cichanski, the Court of Appeals proceeded to characterize the evidence of sexual bias towards Ms. Cichanski (which directly caused adverse effects upon her employment status) as wholly circumstantial, giving rise only to permissible inferences which the trial judge could decline to draw. Such treatment of Ms. Cichanski's claims manifests an astonishing insensitivity to the perhaps subtle, but nonetheless invidious, forms of sex discrimination suffered by an individual woman.

As this Court has often observed, "in enacting Title VII of the Civil Rights Act of 1964, Congress intended to prohibit all practices in whatever form which create inequality in employment opportunity due to discrimination on the basis of race, religion, sex, or national origin . . . (citations omitted) . . . and ordained that its policy of outlawing such discrimination should have the 'highest priority' . . . (citations omitted) . . ." *Franks* v. *Bowman Transportation Co., Inc.*, 424 U.S. 747, 96 S.Ct. 1251, 1263 (1976). In the implementation of personnel decisions, "it is abundantly clear that Title VII tolerates

no racial discrimination, subtle or otherwise." *McDonnell Dougas Corp.* v. *Green,* supra at 801. The statute is equally clear in its purpose to shield women employees from the sexually biased actions and practices of employers, in whatever forms that bias is manifested.

There is no basis in the language or the purposes of Title VII for imposing higher standards of proof upon, or ignoring equally prohibited actions against, individuals who have been victimized by sexual, rather than racial, discrimination in their employment.

Ms. Cichanski respectfully submits that this Court should grant this Petition for Certiorari to clarify that the standards governing the proof of individual non-class actions under Title VII are the same without regard to the basis of the discrimination suffered and that persons who have suffered injuries as a result of unjustifiable discrimination based on sex are equally entitled to have their claims recognized and to be afforded relief.

CONCLUSION

For the reasons stated, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

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APPENDIX A

JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

(Entered on April 28, 1976)

Enter decision that the complaint be dismissed & that judgment be entered in favor of the defendant pursuant to F.R.C.P. 52 & 58. (DRAFT)

/s/ *Thomas R. McMillen*, Judge

APPENDIX B

DECISION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

UNITED STATE DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CHARLOTTE CICHANSKI,

Plaintiff,

v.

HONEYWELL INC.,

Defendant.

No. 74 C 754

DECISION
(Entered on April 28, 1976)

This case came on to be heard under Title VII of the Civil Rights Act of 1964. Plaintiff contends that she was discharged by the defendant because of her sex after twenty-one (21) years of employment. The case was tried with an advisory jury, and the defendant's motion for a finding at the close of the plaintiff's evidence was denied. The jury rendered a verdict in favor of the plaintiff on the issues of her discharge and on defendant's refusal to transfer her but rendered a verdict in favor of the defendant on the issue of its failure to promote her. We nevertheless find and conclude that judgment should be entered on all issues in favor of the defendant on the weight of the evidence.

The plaintiff bases her case of discrimination almost entirely upon circumstantial evidence. The facts are that substantially more men are employed in certain positions of the defendant's plant than are women and at generally higher salaries, that men are given greater privileges with respect to lunch, coffee breaks and late arrival than women, and that defendant discharged the plaintiff without following its usual written policy procedures. At the close of the plaintiff's evidence, we found that these circumstances gave rise to a possible inference of discriminatory conduct by the defendant based upon sex and that it would be preferable to hear all of the evidence for both parties before rendering a final decision. See *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 432 (1971).

Plaintiff's charges with the E.E.O.C. dated June 10, 1972 consist of the following:

> I believe I have been discriminated against because after working for Honeywell for over 21 years I have been terminated without a just cause. I believe the Personnel Department discriminated against me because they terminated me after ignoring my request to have someone from the Personnel Department be present during meetings when my boss harassed me. I believe the Personnel Department discriminated against me when they refused me promotions for which I qualified. I believe Personnel Department denied me equal wages that other secretaries were paid for the same type of work. I believe the company discriminated against me when they over-ruled my doctor's statement that I be given another month sick leave after my foot surgery by threatening me with termination and stopping my sick leave pay. I had to return to work wearing houseslippers. I believe my supervisor Sanford Egesdal discriminated against me because the men in the department had many privileges but I was confined to strict rules. I believe the com-

pany discriminated against women when we were replaced by men in the Production Planning department and our job of Record Clerk was changed to Record Analyst and the job was made 2 labor grades higher. I believe the company discriminated against me for the last 12 years by not allowing me to stay in or progress into the higher labor grade positions and thus owes me back pay of at least $24,000. I believe the company was aware of the repercussions that could arise from this act and tried to coerce me into signing resignation papers. I believe I am further being discriminated against because my husband works for the same company and has been denied to carry me on his Major Medical Insurance Group Plan to which every worker is entitled to.

Defendant's evidence showed that plaintiff's work performance and general attitude deteriorated during the last few years of her employment. Some of this arose because she wished to be transferred to the new location where her husband had previously been transferred, in advance of the defendant's schedule which would eventually have placed her there. This desire for an expedited transfer would accommodate her transportation to work by private automobile with her husband but was steadfastly resisted by the defendant.

A more serious problem developed between the plaintiff and her supervisor Sanford Egesdal which can best be described as a "personality conflict". This relationship began in December 1969 and ended with plaintiff's discharge in February 1972. It affected the work of other employees and eventually resulted in plaintiff's termination for what was generally described as a "bad attitude". This was not reduced to writing but reflects a report made by a prior supervisor of the plaintiff dated 5-11-66 which included:

The principle reason for the delay in not recommending this increase has been an attitude problem. Charlotte while doing excellent work, has been a disturbing influence due to her continuous grumbling, complaining and lack of interest in finding better ways of doing things. In the past 3-4 mos. there has been a significant improvement in this area as demonstrated by several suggestions she made that have improved the clerical efficiency of the group.

Defendant concedes that it made a "subjective evaluation", apparently meaning that it was based upon the plaintiff's state of mind as well as the supervisor's state of mind. In any event, we find no reason to question the good faith of the defendant or the supervisor. The defendant's evidence shows that, during her last few years of employment, the plaintiff did not get along well with certain of her fellow employees, she did not perform her work load as well as her co-employees, and she resisted taking on work from other persons in her classification when necessary or when she had the time.

Most importantly, there is no question but that she and Mr. Egesdal had a serious conflict which affected the work of both of them and could not be solved except by her discharge. Unfortunately, the company did not see fit to transfer either one of these long-term employees in order to eliminate this problem, but the wisdom of its decision is not an issue. There is no evidence whatsoever that the plaintiff was discharged because of her sex, and the jury properly found that she was not denied a promotion for this reason. She was not qualified for a higher position in the department, and her particular job classification was generally filled by women. Her replacement was a woman. Therefore, any inference that may have been possible from the factors relied upon by the plaintiff indicating a gen-

eral policy of discrimination by the defendant have been overcome by the weight of the evidence. There is no evidence on which to base the conclusion that the plaintiff was discharged at least in part because she was a woman. Therefore, the plaintiff's rather questionable *prima facie* case was completely overcome by the evidence to the contrary.

Plaintiff relies upon a syllogism which, in our opinion, is defective. Her reasoning apparently is (a) she is a woman; (b) defendant discriminates against women with respect to job classifications, salary, and working conditions; (c) therefore defendant discriminated against the plaintiff when she was discharged. However, there is no objective evidence that the defendant discriminated generally against women either with respect to job classifications or other terms and conditions of work. They were not treated entirely the same as men, because the job content and their duties differed. On the other hand, there is no evidence that the difference in treatment was because they were women. But even if it might be concluded that the defendant discriminated generally against women, it does not follow that the plaintiff was discharged because of this. There were valid reasons for her discharge, although admittedly this is a harsh measure, particularly in the case of a long-term employee.

The jury also found that the defendant failed to transfer the plaintiff in part because she was a woman. We find no evidence of this, the refusal to transfer being based upon a company policy to make transfers to its new location on a certain schedule which caused the plaintiff's husband to be transferred before she was. Even if this particular act was based on sex discrimination, however, we fail to see how it can be compensated by damages. The

plaintiff was properly discharged, and the question of her transfer became moot thereafter. Furthermore, even if she were to be reinstated, it would be at the same plant where her husband is now employed. The alleged discrimination for refusing a premature transfer would have been temporary and *de minimus*.

The jury found no discrimination with respect to the failure to promote the plaintiff. We agree with this particular verdict and believe it is in accord with the weight of the evidence.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the complaint be dismissed and that judgment be entered in favor of the defendant pursuant to F.R.C.P. 52 and 58.

ENTER:

/s/ Thomas R. McMillen
Judge, U. S. District Court

Dated: Apr. 28, 1976

APPENDIX C

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

(Entered on January 13, 1977)

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604
(Argued December 6, 1976)
January 13, 1977.

Before
Hon. Luther M. Swygert, Circuit Judge
Hon. Wilbur F. Pell, Jr., Circuit Judge
Hon. William J. Bauer, Circuit Judge

CHARLOTTE CICHANSKI,

Plaintiff-Appellant,

No. 76-1671 vs.

HONEYWELL, INC.,

Defendant-Appellee.

On Appeal From the United States District Court for the Northern District of Illinois, Eastern Division.
No. 74 C 754
Thomas R. McMillen, Judge.

ORDER

Plaintiff appeals from an adverse judgment on three sex discrimination claims brought under Title VII. She claimed at trial that the defendant refused to promote or transfer her, and then discharged her, at least partly because of her sex. The defendant answered that plaintiff was denied

promotion because she was unqualified for one, refused a transfer because of legitimate, nondiscriminatory company policies, and discharged because of her inability to get along with her supervisor and co-workers.

The case was tried to the district court sitting with an advisory jury. The jury found that the defendant had not discriminated against plaintiff on the basis of sex in denying her a promotion, but that it had illegally denied her a transfer and discharged her because of her sex. Notwithstanding these special verdicts, the district court entered judgment for the defendant on all three of plaintiff's claims. We affirm the district court for the reasons noted below.

Plaintiff is a 55-year-old woman who was employed by the defendant from 1950 until her discharge in 1971. During her 21 years with the company, she performed a number of jobs admirably enough to have received a series of merit salary increases and, with rare exception, favorable work evaluations. In light of that sterling employment record, she believes that the company's discharge of her in violation of its own policies, as well as its failure to promote or transfer her, must be attributable at least in part to sexual bias. This inference is buttressed, she argues, by statistical evidence of sexual stratification in the clerical, technical, administrative and supervisory job classifications of the defendant's plants that reveals the company's predisposition to discriminate against women. The inference of sexual bias created thereby is further strengthened, says plaintiff, by the company's sexually discriminatory enforcement of work rules with respect to lunch periods, coffee breaks and late arrival.

Plaintiff's principal argument on appeal is that she made out a prima facie case of sex discrimination on the basis of the above evidence, and that the defendant failed to meet its burden under *McDonnell-Douglas Corp.* v. *Green,* 411 U.S. 792 (1973), of coming forward with evidence showing a legitimate, nondiscriminatory reason for discharging her and refusing to transfer or promote her. According to the plaintiff, the district court's findings to the contrary are clearly erroneous. She also contends that the court committed reversible error in excluding certain evidence and in commenting that, because she had been properly discharged, her transfer claim was moot. We find all of her arguments without merit.

The evidence presented below, taken as a whole, points to the conclusion that the plaintiff was probably treated unfairly by the defendant. But Title VII does not proscribe employers from treating employees unfairly, as long as the actions complained of are not taken on the basis of impermissible factors such as sex. We agree with the district court's observations that neither the "wisdom," nor the "good faith" of the company's actions was at issue in this Title VII case. The only issues properly before the district court were whether the defendant refused to promote or transfer the plaintiff, or discharged her, at least in part because of her sex. Viewing the evidence and all reasonable inferences therefrom in the light most favorable to the defendant, as we must at this stage of review, we cannot say that the district court's findings were clearly erroneous.

However unfair, the defendant's discharge of the plaintiff because of her purported inability to get along with her supervisor and fellow employees is not proscribed by Title VII unless it stems at least in part from sexual bias. To be

sure, triers of fact are entitled to treat subjective evaluations used as a basis for discipline or discharge with healthy skepticism, at least when they conflict with favorable evaluations contained in an employee's personnel file or when they emanate from supervisors who are not members of the Title VII-protected class to which the employee belongs. *Caro* v. *Schultz,* 521 F.2d 1084, 1086 (7th Cir. 1975); *Rowe* v. *General Motors Corp.,* 457 F.2d 348, 359 (5th Cir. 1972). But the skepticism appropriate in such instances does not prevent the trier of fact from crediting testimony indicating that the subjective evaluation was the product of factors other than impermissible bias, such as the personality clash established by the testimony presented during the trial. We cannot say that the district court's finding that the plaintiff was discharged because of her "bad attitude" and inability to get along with her supervisor and co-workers was clearly erroneous.

Similarly, the court's finding that the defendant's unwillingness to promote plaintiff was not attributable to sexual bias cannot be deemed clearly erroneous. Even the advisory jury found that the plaintiff had not been denied a promotion because of her sex, and the district court's like finding is supported by the evidence.

As to the plaintiff's refusal-to-transfer claim, the evidence, when viewed in the light most favorable to the defendant, is also sufficient to support the court's judgment. According to testimony brought out at trial, the company's refusal to transfer plaintiff from its Morton Grove plant to its new plant in Arlington Heights was based on a nondiscriminatory policy against transferring personnel before the time set by a general relocation schedule. The company also presented evidence that its refusal to transfer plaintiff to a different department within the

same plant in which she worked was based on a settled company policy against transferring personnel merely to assuage conflicts with supervisors or co-workers. Plaintiff argues that because positions for which she applied and was qualified were open at both the Morton Grove and Arlington Heights plants, and because it was company policy to alleviate "demotivating influences" in the work environment prior to discharging a failing employee, the refusal to transfer must necessarily have been due to sexual bias. Although we agree that such an inference could be drawn from such evidence, it was for the trier of fact to determine whether that inference *should* be drawn. We cannot say that the district court's action in crediting the defendant's testimony and refusing to draw the inference of sexual discrimination permitted by plaintiff's evidence was clearly erroneous.

Nor do we agree with the plaintiff that the district court committed reversible error by commenting that the issue of her transfer was moot because she had been properly discharged. As we read the district judge's memorandum opinion, his comment was a hypothetical statement that was directed to the remedial problem that would have been created had he found plaintiff's transfer claim meritorious while simultaneously finding that her discharge was not sex-related. Thus, we do not understand the judge to have meant by his comment that a sex-related refusal to transfer was in itself a de minimis breach of the law, or that he was so unimpressed by the nature of the injury attributable thereto as to have effectively disregarded the issue and the supporting evidence adduced by plaintiff.

Plaintiff's most persuasive arguments on appeal are that the district court erred by refusing to admit evidence of plaintiff's qualifications for other jobs, as well as statistical data of the company's highly stratified pay and

job structure tending to show that it systemically discriminated against women. But, even assuming the relevancy of this evidence, we are not convinced that its exclusion was prejudicial.

With respect to the evidence bearing on the plaintiff's abilities to handle other jobs, we believe that, at the time the evidence was offered, the court was arguably correct in excluding it because the plaintiff failed to lay a foundation showing that opportunities for promotion or transfer within the plant existed. Moreover, this evidence was largely cumulative of the parties' stipulations and the plaintiff's own testimony regarding the various work assignments she had performed during her 21 years with the company. The evidence already admitted showed her qualifications for promotion or transfer, and the evidence excluded did not directly prove that she was denied a promotion or transfer because of sexual bias. At most, the excluded evidence would have raised only a permissible inference of discrimination, an inference that the trier of fact could have drawn from other evidence already admitted had the court been inclined to so do.

As to the evidence of job and salary stratification proffered to show the company's predisposition to discriminate against women, the same analysis applies. Though relevant even in an individual suit, *Burns* v. *Thiokol Chem. Co.*, 483 F.2d 300, 305 (5th Cir. 1973), the statistical data adduced was largely cumulative of other data already in evidence on which the district court relied in determining that plaintiff had made out a prima facie case of discrimination. Were this a class action, we might be inclined to look more carefully at the district court's exclusionary ruling. However, in this individual suit, the class data excluded could at most give rise to the same

permissible inference of discrimination that the district court took note of in denying defendant's motion for a directed verdict at the close of plaintiff's case in chief.

Because the evidence excluded by the district court was cumulative of testimony and data already before the court, we do not believe that reversible error was committed by its exclusion. *McDonald* v. *Milwaukee Mechanic's Ins. Co.*, 167 F.2d 276, 278-79 (7th Cir.), *cert. denied*, 334 U.S. 845 (1948); *see* 28 U.S.C. § 2111; Fed. R. Civ. P. 61.

For the reasons noted above, we affirm the district court's judgment.

AFFIRMED.

APPENDIX D

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

(Entered on February 15, 1977)

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604
February 15, 1977

Before
Hon. Luther M. Swygert, Circuit Judge
Hon. Wilbur F. Pell, Jr., Circuit Judge
Hon. William J. Bauer, Circuit Judge

CHARLOTTE CICHANSKI,
Plaintiff-Appellant,

No. 76-1671 vs.

HONEYWELL, INC., a foreign corporation,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 74-C-754

On consideration of the petition for rehearing and suggestion that it be reheard *in banc* filed in the above-entitled cause, no judge in active service having requested a vote thereon, nor any judge having voted to grant the suggestion, and all of the members of the panel having voted to deny a rehearing,

IT IS ORDERED that the petition for a rehearing in the above-entitled cause be, and the same is hereby, DENIED.

APPENDIX E

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

SUPREME COURT OF THE UNITED STATES
No. A-905

CHARLOTTE CICHANSKI,

Petitioner,

v.

HONEYWELL, INC.

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including July 15, 1977.

/s/ John Paul Stevens
Associate Justice of the Supreme Court of the United States

Dated this 5
day of May, 1977.

Supreme Court, U. S.
FILED
AUG 12 1977
MICHAEL RODAK, JR., CLERK

No. 77-82

In the
Supreme Court of the United States
October Term, 1977

CHARLOTTE CICHANSKI,
Petitioner,

vs.

HONEYWELL INC.,
Respondent.

On Petition For A Writ Of Certiorari To The
United States Court of Appeals
For The Seventh Circuit

BRIEF FOR HONEYWELL INC. IN OPPOSITION

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-82

CHARLOTTE CICHANSKI,

Petitioner,

vs.

HONEYWELL INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Seventh Circuit

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BRIEF FOR HONEYWELL INC. IN OPPOSITION

OPINIONS BELOW

The opinions of the District Court and the Court of Appeals are unreported. Copies are included in Petitioner's Appendix B (Pet. App. 2-7)[1] and Appendix C (Pet. App. 8-14).

JURISDICTION

The judgment of the Court of Appeals was entered on January 13, 1977 (Pet. App. 8) and a Motion for Rehear-

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[1] Citation to Petitioner's Appendix.

ing was denied on February 15, 1977 (Pet. App. 15). This Court's jurisdiction is invoked under 28 U.S.C. 1254.

QUESTIONS PRESENTED

1. Whether the standards for the disposition of private, non-class actions challenging employment discrimination prohibited by Title VII of the Civil Rights Act of 1964, as amended, as articulated by the Supreme Court in *McDonnell Douglas* v. *Green*, 411 U.S. 792 (1973) are mandatory on the Circuit Courts of Appeals.

2. Whether a private non-class action brought pursuant to Title VII of the Civil Rights Act of 1964, as amended, challenging employment discrimination based on sex is governed by the same standards of disposition as comparable actions challenging employment discrimination based on race.

STATUTES INVOLVED

Title VII of the Civil Rights Act of 1964, 78 Stat. 253, 42 U.S.C. §2000e et seq., as amended:

(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(42 U.S.C. §2000e-2(a))

STATEMENT

Petitioner, Charlotte Cichanski, is a 55 year old woman who was first employed by the Respondent, Honeywell Inc. (Honeywell), on October 16, 1950 and was terminated by Honeywell on February 10, 1972. Following her termination, Ms. Cichanski filed a charge of sex discrimination with the Equal Employment Opportunity Commission (case file number TCH 2-2248) which was processed in accordance with the mandate of Title VII. She requested and was given a right to sue letter on February 8, 1974, after which Ms. Cichanski filed the instant action on March 20, 1974, in the United States District Court for the Northern District of Illinois.

During her employment with Honeywell, Ms. Cichanski performed various office clerical duties in the Production Planning, Stationery, Accounting, Methods, Applications, Steno Pool, and Quality Departments. For the last ten years of her employment with Honeywell, Ms. Cichanski worked as a secretary in the Quality Department, the final three years of which were spent under the supervision of Mr. Sanford Egesdahl. Other employees in the Quality Department (excluding supervisors and clerical) were engineers and technicians, all of whom were males and several of which were also supervised by Mr. Egesdahl. In the eight months preceding her termination on February 10, 1972 Ms. Cichanski requested to be transferred to work in a location away from Egesdahl. This request was denied.

Ms. Cichanski received salary increases while employed by Honeywell, the last two of which were granted by Mr. Egesdahl. Approximately once each year between 1964 and 1970 a formal written evaluation of her work performance was prepared by her supervisor at the time, for

the purpose of recommending her salary be increased. On each of those occasions her performance was rated for that purpose as "outstanding", according to the Honeywell Compensation Manual which was first issued in 1967. When Mr. Egesdahl became her supervisor in 1969 Ms. Cichanski was being paid in the upper part of the salary range applicable to her job classification. Thereafter, on two occasions (once in October, 1969 and again in December, 1970) he recommended and was given approval to increase her salary, to maintain her relative position within the salary range applicable to her job category. (Salary ranges are increased from time to time for various job categories) He did not recommend or increase her salary thereafter.

In 1969, and continuing into 1972, Honeywell was in the process of installing a procedure for developing written work objectives for office employees to be used for salary administration purposes. The procedure was first installed for management employees and progressively thereafter for engineers, technicians, administrative, and clerical employees. This procedure had not yet been applied to Ms. Cichanski's job by February 10, 1972, the date of her termination. However, in June, 1970 a "master list" of secretarial duties was written and issued to the clerks in the Quality Department against which she was evaluated. Also, shortly prior to her termination a Quarterly Manpower Management Review procedure (another method of evaluating an employee's performance) was implemented; all employees under Mr. Egesdahl's supervision were rated by this procedure, including Ms. Cichanski on February 7, 1972.

In 1970 and continuing through February 7, 1972, Mr. Egesdahl received complaints from other employees (both

male and female) in the Quality Department concerning Ms. Cichanski's conduct at work and personally encountered resistance by her to his work direction. Attempts to resolve these matters were made without success. On February 7, 1972, following a final dispute between himself and Ms. Cichanski, Mr. Egesdahl recommended that she be discharged. That recommendation was approved by several higher Honeywell officials. On February 10, 1972, Mr. Egesdahl told Ms. Cichanski she was terminated because of her overall negative attitude, inability to get along with others and take work direction, and for being disruptive.

Honeywell had in effect, during the time of Mr. Egesdahl's supervision of Ms. Cichanski, certain written "Personnel Policies and Procedures" covering methods to be followed by management in dealing with an apparently failing employee and terminating that employee if such action was necessary. Those procedures specified that the cause of the employee's failure was to be identified and an attempt was to be made to correct this cause prior to termination. The procedures further specified, however, that ". . . termination is the appropriate action . . ." if the employee has a ". . . fundamental lack of willingness . . ." to succeed in his job assignment. If termination was selected, and the employee was 40 or more years of age and had 15 or more years of Honeywell service, special separation pay could be paid. Special separation pay of that type was approved for the petitioner in less than the normal time stated in Honeywell policy to obtain such approval, but early approval had also been obtained in other cases for employees similarly situated.

In July, 1971 Ms. Cichanski requested a transfer away from Mr. Egesdahl's supervision. At that time Honeywell

was in the process of moving its plant facilities from Morton Grove, Illinois to Arlington Heights, Illinois; the department in which her husband worked (also a Honeywell employee and with whom she normally rode to work) had already been transferred, but the Quality Department in which she worked had not.[2] Testimony was presented at trial that Honeywell had settled policies of (1) not transferring any employees to the new Arlington Heights facility in advance of their work being transferred and (2) not transferring employees to different work merely to assuage personality conflicts. Ms. Cichanski was told her request to be transferred was denied for these reasons. Moreover, no evidence was introduced to show any openings existed (with one exception) to which she could have been transferred.

[2] Ms. Cichanski and her work were, in fact, transferred to the new Arlington Heights facility in December, 1971, with the rest of the Quality Department.

ARGUMENT

1. Petitioner first contends that the District Court ruling (Pet. App. 2-7) and the Court of Appeals ruling (Pet. App. 8-14) did not apply the standards of proof set forth in *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792 for the disposition of private, non-class actions alleging employment discrimination under Title VII of the Civil Rights Act of 1964. She argues certiorari should be granted to resolve whether adherence to such standards is mandatory. However, this issue is not raised by the record below. Rather, the record indicates that both the trial court and the Court of Appeals applied the standards of *McDonnell Douglas* and their determination that they were met is amply supported by the record.

At no time in the proceedings below did Honeywell, nor does it now, contend that the petitioner's complaint should be considered by standards other than those set out in *McDonnell Douglas*. Indeed, at the close of petitioner's case in chief, Honeywell moved for dismissal under Rule 41(b) of the Feedral Rules of Civil Procedure, arguing that she had not established a *prima facie* case as required under *McDonnell Douglas* (R. 178).[3]

The trial court denied that motion and required Honeywell to proceed with its defense (R. 194). After consideration of all the evidence, the trial court ruled for Honeywell on all issues. Thereafter, appeal was taken to the

[3] Citation to record transcript, now on file in the United States District Court for the Northern District of Illinois Eastern Division.

Court of Appeals for the Seventh Circuit by the petitioner, principally on the ground that Honeywell had not met the burden required by *McDonnell Douglas* of coming forward with evidence showing a legitimate, non-discriminatory reason for discharging her and refusing to transfer or promote her. (Pet. App. 10) After consideration of all the evidence, the Court of Appeals rejected this contention and sustained the finding of the trial court. Thereafter, it unanimously denied a petition for a rehearing *en banc* (Pet. App. 15). There is no question that petitioner, respondent and the Courts below have relied on the standard of proof set out by this Court in *McDonnell Douglas*. Thus, no issue is raised by the record as to whether the standards of proof set forth in *McDonnell Douglas* are mandatory.

Moreover, the petitioner's claim that the evidence does not support the finding that standards set out in *McDonnell Douglas* were met, is without merit. Petitioner testified at trial that she had been employed by Honeywell for 21 years, during which time she received periodic merit salary increases and favorable work evaluations, that work rules with respect to lunch periods, coffee breaks and late arrival were differentially applied between males and females, and that certain written personnel policies were not followed when she was discharged. Further, statistical evidence was introduced showing more men are employed by Honeywell in certain positions and at generally higher salaries than are women. The trial court found this evidence gave rise to a possible inference of discriminatory conduct by Honeywell in its refusal to promote or transfer the petitioner and its termination of her employment. After hearing all the evidence, however, it ruled this "rather questionable" prima facie case was

"completely overcome by evidence to the contrary" (Pet. App. 6).

Honeywell established, in rebuttal, that, although the petitioner had formerly been a satisfactory employee, her work performance and general attitude deteriorated during the last few years of her employment (R. 255). Her job was to provide secretarial assistance to her supervisor as well as a number of engineers and technicians, and to assist other clerical employees having similar duties in the Quality Department. In 1970 a dispute occurred at work between the petitioner and another female clerk in the Quality Department. After discussion, a written list of work duties and expected conduct of clerks in the Quality Department was developed and issued to them. It stressed the necessity of being cooperative and courteous in their work (R. 269-270). On multiple occasions thereafter the petitioner's conduct towards other employees in her department (both male and female) caused complaints to be made to her supervisor, Mr. Egesdahl (R. 165-166, 266-269, 275). Moreover, she began to reject his work directions on several occasions and denied any fault when Mr. Egesdahl attempted to correct her behavior (R. 271-274, 277-278). Clearly, a "personality conflict" developed between the petitioner and Mr. Egesdahl. Finally, on February 7, 1972 while Mr. Egesdahl was attempting to evaluate her work performance with her an argument occurred between them, and the petitioner refused to continue the discussion without the presence of the Personnel Director. After having attempted to induce a change in the petitioner's conduct over a two-year period, Mr. Egesdahl then decided to recommend that she be discharged. When she was discharged on February 10, 1972 the petitioner was told by Mr. Egesdahl that his

reason for doing so was her overall negative attitude, her inability to get along with others and take work direction, and for being disruptive (R. 280-283).

Petitioner contends that the Court of Appeals erred in sustaining the trial court's crediting of this evidence. However, nothing was presented to refute the evidence that the petitioner had such disputes and controversies with her co-workers and Mr. Egesdahl. Additionally, she presented no evidence to show that her sex was a factor in Honeywell's determination to terminate her employment. Statistical evidence was introduced at trial showing that 48 persons (both male and female) were employed in the Quality Department between 1969 and 1974, but no attempt was made to show that any of them had engaged in conduct of a comparable nature without incurring discharge (R. 128; Pl. exhibit 17[4]). The Courts of Appeals have repeatedly recognized that personality conflicts and a bad attitude towards work, other employees, and supervision are legitimate, nondiscriminatory reasons for an employer's employment decisions. *Thompson* v. *McDonnell Douglas Corp.*, 552 F.2d 220 (8th Cir. 1977); *Ayon* v. *Sampson*, 547 F.2d 447 (9th Cir. 1976); *Martin* v. *Thompson Tractor Co.*, 487 F.2d 510 (5th Cir. 1973); *Ammons* v. *Zia Corp.*, 448 F.2d 117 (10th Cir. 1971).

In an attempt to overcome such proof and lack of rebuttal, petitioner alleges that the method used by Mr. Egesdahl to reach his decision to terminate her was discriminatory. She argues that Mr. Egesdahl made a "subjective evaluation" of her conduct, while the work performance of male employees under his supervision was

[4] Citation to record petitioner's exhibit, now on file in the United States District Court for the Northern District of Illinois, Eastern Division.

evaluated under a more formal procedure.[5] While it is true that subjective judgments are sometimes subject to healthy skepticism, the fact that a determination is reached subjectively does not destroy the rebuttal weight to which it is entitled. *McDonnell Douglas Corp.* v. *Green, supra.* Detailed testimony was presented by Mr. Egesdahl of the incidents leading to that judgment, and there is no evidence that his concern with Ms. Cichanski's conduct was tainted with impermissible bias. It was not error for the Court to credit his clear testimony, over a mere inference that it was biased because he was male and that a written record of the incidents was not prepared. Indeed, petitioner's witness Nancy Norris (another clerk in the Quality Department) testified that Mr. Egesdahl ". . . treated me fine" (R. 152). On the other hand, the petitioner testified:

"Q. Mrs. Cichanski, between 1950 and 1969 when Mr. Egesdahl became your supervisor, how did your supervisors at Honeywell treat you?
A. Very, and with respect.
Q. Did you ever have any disagreement with them?
A. Not that I recall. If there were any, they were very, very minor. (R. 63)
Q. . . . do you recall whether Mr. Egesdahl treated you differently from the way in which any of your previous supervisors treated you?
A. Yes. He never asked me to do things in a nice way. He just barked his orders at me. He was abrupt and unreasonable. He was petty." (R. 72)

[5] Honeywell witnesses testified that the more formal evaluation procedure was necessarily implemented in stages to various job categories to have it operate properly, and that implementation procedure had not reached Ms. Cichanski's job before she was terminated (R. 39-40, 50-51, 207). Thus, the method of implementation was related to job category, not the sex of the incumbents.

Clearly, the petitioner did not appreciate the manner of Mr. Egesdahl's work direction. However, the record is totally void that his mannerisms or judgments were sexually biased.

Petitioner places great emphasis on an incident that occurred on February 6, 1972 when Mr. Egesdahl told her not to leave work early. She alleges that was the reason for her discharge, and that Mr. Egesdahl did not discharge a male employee who was habitually late (Pet. 11-12).[6] The record shows that Mr. Egesdahl's directive to the petitioner, that she not leave work early, was caused by her leaving early on several prior occasions (R. 50). Similarly, the record shows Mr. Egesdahl had reprimanded the male employee about his work hours, and later when that employee learned that another absence had been noted, he voluntarily quit before anyone in management could talk to him about it (R. 51-52). No sexually disparate treatment is evident in even this isolated incident. More importantly, as the record demonstrates, at no point did Honeywell claim that the petitioner's work attendance was a reason for her discharge. Rather, it contended that she was discharged because ". . . during her last few years of employment, the plaintiff did not get along well with certain of her fellow employees, she did not perform her work load as well as her co-employees, and . . . she and Mr. Egesdahl had a serious conflict . . ." (Pet. App. 5).

Petitioner argues, however, that (1) ". . . In the six to eight months immediately preceding her termination, Ms. Cichanski made repeated requests for a transfer or promotion. . ." (Pet. 3-4), (2) Honeywell's personnel procedures specify ". . . reassignment is to be used where possible as an alternative to termination. . ." (Pet. 14),

[6] Citation to the Petition.

and (3) Honeywell's discharge action would not have been necessary if she had been granted a reassignment (Pet. 18). The record shows that when the petitioner asked for reassignment the stated reasons for her request were that she had a personality conflict with Mr. Egesdahl and that she was having a transportation problem because her husband (also a Honeywell employee) had by then been transferred to Honeywell's new plant in Arlington Heights, Ill. She was told, in response to her request the Company does not transfer employees because of personality conflicts, and that during the transition of moving its facilities from Morton Grove to Arlington Heights employees were not being transferred because of transportation problems. (R. 224-227)

Petitioner does not argue that Honeywell was legally bound to follow its personnel policies, but contends it is bound to apply them alike to both sexes (Pet. 15). However, she presented no evidence that these policies were differentially applied between males and females. Her petition observes that a record document reveals seven reassignments of persons working in the Quality Department in 1970 and 1971, and concludes therefrom that Honeywell had no policy limiting transfers between its old and new facilities. (Pet. 17-18) However, the reasons for any of these transactions or the locations at which they occurred are not indicated on the document, nor does the document show that any of them occurred between the time of petitioner's request for transfer and her discharge. Even so, the document (Pl. exhibit 17) shows that during 1970-71 one female and two male employees were promoted, and two females and two males were transferred; it also shows two female and five male terminations. This evidence does not support the petitioner's allegation of disparate treatment based on sex, nor does it rebut the validity of the

policy reasons cited by Honeywell for not reassigning her. Further, there is no merit to the petitioner's claim that the Court of Appeals erred in sustaining the trial court's exclusion of (1) a document indicating the number of Honeywell employees in technical, administrative, and clerical jobs by pay grade and sex, and (2) her complete testimony on work performed by her in other jobs[7] (Pet. 18-19). The rejected document was offered by the petitioner solely to establish a *prima facie* case of plantwide sexual stratification (R.154). However, the trial court did in fact find a prima facie case of stratification from other admitted evidence (Pet. App. 3). Thus, the Court of Appeals correctly ruled exclusion of this document was not prejudicial in that it was "largely cumulative" of other evidence. Moreover, although statistics are often helpful in Title VII cases, it is clear that to be of probative value there must be a correlation between statistics offered and the issues in dispute. *Narraine* v. *Western Electric Company, Inc.,* 507 F2d 590 (8th Cir. 1974); *Robinson* v. *City of Dallas,* 514 F2d 1271 (5th Cir. 1975); *Olson* v. *Philco-Ford,* 531 F2d 474, 477 (10th Cir. 1976); *Jimerson* v. *Kisco Co.,* 542 F2d 1008 (8th Cir. 1976). Although statistics may have probative value to show intent or purpose, they are not determinative of an employer's reason for acting in a private non-class action where there is ample evidence to show the employer's actions were not discriminatory. *King* v. *Yellow Freight Systems Inc.,* 523 F2d 879 (8th Cir. 1975); *Terrell* v. *Feldstein Co.,* 468 F2d 910 (5th Cir.

[7] Documentary evidence, stipulated facts, and summary testimony of her employment prior to 1962 was admitted into the record (Pl. exhibit 11, R. 4-5, 59-61). Full testimony on her work duties from 1962 up to February 10, 1972, the date of her discharge, was presented. (R. 61, 64-65, 77, 91-92).

1972). [See also the cautionary observation of this Court in footnote 19 of *McDonnell Douglas* v. *Green,* supra, at 805.] Here there was no showing that the document, which was offered only for an inference of general bias, had any connection with the reasons why the petitioner was not reassigned and was later discharged. Under these circumstances and the existence of justifiable reasons for Honeywell's actions, it was not "clearly erroneous" to exclude these statistics.

Similarly, the record shows that the trial court's initial consideration of the petitioner's testimony regarding the duties she performed on jobs prior to 1962 occurred early in her case-in-chief and before any *prima facie* case had been established. The trial court did not in fact exclude such testimony but stated: "Well, if it becomes necessary to put on some rebuttal testimony, you can do that." (R. 60) Thereafter petitioner's counsel, before closing his case-in-chief, made an offer of proof, but the Court advised him there was no evidence in the record that openings for transfers existed, and that without it, testimony on petitioner's job duties prior to 1962 lacked foundation. (R. 104-106) The trial court stated *again,* however: ". . . if there is a foundation for showing there was a transfer potential, you can show that at the time of rebuttal." (R. 108)

The trial court's reluctance to hear a litany of detailed job duties performed more than 10 years prior to her discharge at the time it was offered was not erroneous nor was it prejudicial to the petitioner. Subsequently, in the trial, testimony was taken as to the petitioner's rejected request for transfer. In turn, Honeywell witnesses testified as to the reasons the petitioner was not transferred (R. 226), and the petitioner had full opportunity to respond.

Although twice advised by the trial court that she could do so, petitioner offered none of the testimony in rebuttal she now contends was erroneously excluded. (R. 286-287) The law does not mandate the trial court dance a judicial minuet in Title VII cases. Honeywell stated its legitimate and uniformly applied policies were the reasons it did not transfer the petitioner. Petitioner did not respond with evidence indicating or even suggesting those reasons were a pretext for discriminatory conduct. She was afforded a fair opportunity to do so; the law mandates nothing more. *McDonnell Douglas Corp.* v. *Green, supra; Sime* v. *Trustees of the California University and College,* 526 F2d 1112 (9th Cir. 1975); *Peters* v. *Jefferson Chemical Co.*, 516 F2d 447 (5th Cir. 1975). The trial court did not err in excluding the testimony under these circumstances.

Petitioner also strongly urges that the Court of Appeals erred in sustaining the trial court's determination that neither the "good faith" nor "wisdom" of Honeywell or its supervisors were an issue in this case. She argues that ". . . such a questioning is absolutely required if Ms. Cichanski is to have her full and fair opportunity to demonstrate . . . the presumptively valid reasons . . . were in fact a coverup for a sexually discriminatory decision" (Pet. 10, 19). However, this Court has clearly articulated that the presence of good intent or the absence of discriminatory intent is not material in reviewing a contested employment decision under Title VII, the consequences of a defendant's actions are controlling, not its intent. *Griggs* v. *Duke Power,* 401 US 424 (1971); *Albemarle Paper Co.* v. *Moody,* 422 US 405 (1975). See also *Williams* v. *General Foods Corp.*, 492 F2d 399 (7th Cir. 1974). Honeywell is in complete accord with these rulings and at no time did it contend that it should be excused in the instant case because of its good faith or the wisdom of its action. More-

over, as noted by the Court of Appeals, the record is replete with evidence supporting the legitimacy of Honeywell's actions. It sustained the trial court's finding that the evidence totally refuted the petitioner's mere inference of discriminatory conduct. Petitioner's *prima facie* inference of sex discrimination was based solely on some evidence of a stratified work force, differential application of working times to different job categories, and an allegation that personnel policies required an employee be transferred and/or 30 days, prior notice be given to higher management before discharge. No evidence was presented by petitioner showing a nexus between those inferences (applicable to employees in general) and the reasons articulated by Honeywell for its actions towards her. The refusal of the Courts below to inquire beyond those reasons and speculate about Honeywell's "good faith" was in strict accordance with the law. Moreover, petitioner had ample opportunity to show those reasons were pretextual, but did not. How the Courts' evaluation of evidence at the conclusion of a full trial on the merits precluded the petitioner from exercising her rights under the standards of *McDonnell Douglas* is not comprehensible.

Stripped of all rhetoric, petitioner's request for certiorari is a plea that the Courts below accorded improper weight to Honeywell's evidence as to the legitimacy of its action in this case. She argues that the inference raised by her *prima facie* evidence should have been credited over the articulated defense of Honeywell. Yet, that inference is barren of any indicia that she was the victim of discrimination. Proof of personal harm is essential for the petitioner to claim that her individual Title VII rights have been violated. *Martin* v. *Thompson Tractor Co.,* 487 F2d 510 (5th Cir. 1973). There is no evidence that a request for promotion was made by the petitioner, or that a trans-

fer opportunity existed. Neither is there any evidence that Honeywell's employment practices were discriminatorily applied to the petitioner or that she was discriminated against in her assigned job duties. Conversely, there is ample evidence that Honeywell uniformly applied its personnel policies without regard to sex, that its failure to reassign the petitioner was for legitimate reasons which were unrelated to her sex and that she was discharged because of a personality conflict with her supervisor and her conduct towards fellow employees. She simply did not present evidence to show that these policies and her treatment under them was a pretext for sexual discrimination against her. It was incumbent upon her to do so. *Sime* v. *Trustees of the California University and Colleges, supra; Teamsters* v. *United States,* ..... U.S. ....., 97 S.Ct. 1843 (1977). Clearly the trial court, as the Court of Appeals found, followed the standards of proof mandated by *McDonnell Douglas.* Just as clearly the petitioner disagrees with the conclusion it reached. Disagreement with its decisions, reached after careful application of the standards set out in *McDonnell Douglas,* however, does not give rise to a question as to whether application of such standards are mandatory.[8]

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[8] Petitioner parenthetically argues a Writ should issue to demonstrate to the ". . . thousands of individual victims of unlawful employment discrimination. . ." (Pet. 19-20) who have come to the federal courts that they are assured the fair administration of justice. Never previously has teh petitioner even hinted that her complaint has class-standing, and it is too late to do so now. *Danner* v. *Phillips Petroleum Corp.,* 447 F2d 159 (5th Cir. 1971); *Nance* v. *Union Carbide Corp.,* 540 F2d 718 (4th Cir. 1976). More importantly, the evidence shows that Ms. Cichanski was not a victim of unlawful discrimination, she was a victim of her own contentiousness and inability to adjust to her working environment. Title VII is designed to eliminate discrimination in working places; it is not designed to protect or correct every frailty of human nature.

2. Petitioner's contention that, even if the Court of Appeals followed the standards of proof mandated by *McDonnell Douglas,* it improperly required a higher standard of proof by the petitioner than would be required if this were a race rather than a sex case, is also without merit. No substantiation is offered, nor is any record evidence cited to show any such higher standard was imposed here. Petitioner simply states that it ". . . seems inconceivable that if a black employee were to demonstrate at trial what Ms. Cichanski did, that the . . . Court would find no evidence of . . . discrimination . . .". (Pet. 22)[9] However, the fact is that the Courts below found only an "inference" of discrimination, and that inference was totally overcome by Honeywell's factual evidence to the contrary.

Recognizing the trial court is in the best position to review the evidence, evaluate the credibility of the witnesses, and determine the facts, Rule 52(a) Federal Rules of Civil Procedure and the courts hold findings of a trial court should not be set aside unless "clearly erroneous." *United States* v. *United States Gypsum Co.,* 338 US 364 (1948); *United States* v. *Oregon State Medical Society,* 343 US 326 (1952); *Glens Falls Ins. Co.* v. *Newton Lumber and Mfg. Co.,* 388 F.2d 66 (10th Cir. 1967), *cert. den.* 390 U.S. 905; *Olson* v. *Philco-Ford, supra.* The fact these findings were contrary to an advisory jury is immaterial. *Moss* v. *Lane Co.,* 471 F.2d 853 (4th Cir. 1973). Petitioner

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[9] If a higher standard of proof had been required here, a basis for review might be present in that courts have applied *McDonnell Douglas* standards to Title VII sex cases. *Causey* v. *Ford Motor Co.,* 516 F.2d 416 (5th Cir. 1975); *Sime* v. *Trustees of California University and Colleges, supra.*

characterizes what would have been the ruling in a race case (Pet. 22-23), but that characterization relies solely on inferences that could be reached on the basis of petitioner's *prima facie* case, wholly ignores evidence to the contrary presented by Honeywell.

Basically, petitioner claims the courts below exhibited an "insensitivity" to her claim and now asks this Court to find discrimination, where there was none. A full four day trial was held on the merits and every facet of it was reviewed by the Court of Appeals. The rules of evidence and the standards of proof set forth by this Court were judiciously followed in those proceedings. No new standards, nor any new issues of law, are presented here for review.

Clearly the petitioner was given a full and fair opportunity to show by rebuttal evidence that Honeywell's articulated reasons for its action were sexually biased. The *total* colloquy offered by the petitioner on rebuttal was as follows:

"Q. Mrs. Cichanski, I only have a few questions. You heard all of the testimony throughout this entire hearing. Did you ever curse at Cindy Bruce?
A. No.
Q. Did you ever call a curse from God down on Sanford Egesdahl?
A. No, because that would be against my religion.
Q. Did you ever curse at any employee?
A. No.
Q. Is everything you have told us throughout the time you have been on the stand, before and now, the truth?
A. Yes.
Q. No further questions." (R. 286-287)

CONCLUSION

Having had a full opportunity to show that her employment was affected by impermissible bias, and that Honeywell's articulated reasons for its actions were pretextual, petitioner should not be granted a Writ simply because she disagrees with the conclusions of the Courts below. Petitioner has not shown that the standards of proof mandated by *McDonnell Douglas* were violated or ignored by those Courts. There is no substantial issue of law here presented for review. Thus, her petition for a Writ of Certiorari to the Seventh Circuit Court of Appeals should be denied.

Respectfully submitted,

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